

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

LORENZO MORENO.

Plaintiff,

v.

UNITED STATES GOVERNMENT,

Defendant.

Case No. 3:22-CV-00374-MMD-CLB

REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE¹

10 Before the Court is Plaintiff Lorenzo Moreno's ("Moreno"), application to proceed
11 *in forma pauperis* (ECF No. 1), and complaint (ECF No. 1-1). For the reasons stated
12 below, the Court recommends that Moreno's *in forma pauperis* application, (ECF No. 1),
13 be granted, and his complaint (ECF No. 1-1), be dismissed, with prejudice.

I. IN FORMA PAUPERIS APPLICATION

15 A person may be granted permission to proceed *in forma pauperis* ("IFP") if the
16 person "submits an affidavit that includes a statement of all assets such [person]
17 possesses [and] that the person is unable to pay such fees or give security therefore.
18 Such affidavit shall state the nature of the action, defense or appeal and affiant's belief
19 that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d
20 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed
21 IFP, not just prisoner actions).

Pursuant to LSR 1-1: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities."

27 ¹ This Report and Recommendation is made to the Honorable Miranda M. Du,
28 United States District Judge. The action was referred to the undersigned Magistrate
Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with
 2 some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
 3 Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely
 4 destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
 5 335 U.S. 331, 339 (1948).

6 A review of the application to proceed IFP reveals Moreno cannot pay the filing
 7 fee. (See ECF No. 1.) Therefore, the Court recommends that the application, (ECF No.
 8 1), be granted and Moreno be granted permission to proceed IFP.

9 **II. SCREENING STANDARD**

10 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
 11 provides, in relevant part, that “the court shall dismiss the case at any time if the court
 12 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a
 13 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant
 14 who is immune from such relief.” 28 U.S.C. § 1915A(b). A complaint is frivolous when
 15 “it lacks an arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325
 16 (1989). This includes claims based on legal conclusions that are untenable (e.g., claims
 17 against defendants who are immune from suit or claims of infringement of a legal interest
 18 which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 19 delusional scenarios). *Id.* at 327–28; see also *McKeever v. Block*, 932 F.2d 795, 798 (9th
 20 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
 21 standard applied in the context of a motion to dismiss under Federal Rule of Civil
 22 Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which
 23 requires dismissal where the complaint fails to “state a claim for relief that is plausible on
 24 its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

25 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
 26 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
 27 accept as true all well-pled factual allegations, set aside legal conclusions, and verify
 28 that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.

1 662, 679 (2009). The complaint need not contain detailed factual allegations, but must
2 offer more than “a formulaic recitation of the elements of a cause of action” and “raise a
3 right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is
4 taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies
5 to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
6 Still, a liberal construction may not be used to supply an essential element of the claim
7 not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is
8 appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice
9 of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*
10 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

11 **III. SCREENING OF COMPLAINT**

12 Even construing the allegations of Moreno’s complaint liberally, the Court cannot
13 conceive or construe any specific set of circumstances under which these conclusory
14 statements would give rise to any federal constitutional or statutory right. The complaint
15 is vague, rambling, nonsensical, and filled with incomplete sentences. Dismissal on those
16 grounds alone is appropriate. Federal Rule of Civil Procedure 8(a)(2) requires that a
17 complaint contain “a short and plain statement of the claim showing that the pleader is
18 entitled to relief, in order to give the defendant fair notice of what the . . . claim is and the
19 grounds upon which it rests.” *Twombly*, 550 U.S. at 555 (quotation and alteration omitted).
20 It must also include “a demand for the relief sought. . . .” Fed. R. Civ. P. 8(a)(3).

21 Here, Moreno’s largely incomprehensible narrative makes it nearly impossible for
22 the Court to identify the factual or legal basis for his claims or the nature of his requested
23 relief. Thus, Moreno states no claim upon which relief may be granted, therefore this
24 action should be dismissed with prejudice. Leave to amend is not appropriate because
25 the deficiencies in Moreno’s complaint cannot be cured by amendment, making
26 amendment futile. See *Cato*, 70 F.3d at 1106.

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IV. CONCLUSION

For good cause appearing and for the reasons stated above, the Court recommends that Moreno's application to proceed *in forma pauperis*, (ECF No. 1), be granted, and his complaint, (ECF No. 1-1), be dismissed, with prejudice, as amendment would be futile.

The parties are advised:

1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, the parties may file specific written objections to this Report and Recommendation within fourteen days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.

2. This Report and Recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

V. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Moreno's application to proceed *in forma pauperis*, (ECF No. 1), be **GRANTED**;

IT IS FURTHER RECOMMENDED that the Clerk **FILE** the complaint, (ECF No. 1-1);

IT IS FURTHER RECOMMENDED that Moreno's complaint, (ECF No. 1-1), be **DISMISSED, WITH PREJUDICE**; and,

IT IS FURTHER RECOMMENDED that this action be **CLOSED**, and judgment be entered accordingly.

DATED: August 24, 2022

UNITED STATES MAGISTRATE JUDGE